

Private Letter Ruling: Sale of one of nine parcels of real property used in business, representing less than 50% of the value of the real property used in business, is not subject to bulk sales reporting requirements.

October 6, 2000

Dear:

This is in response to your letter dated September 28, 2000, in which you request a Private Letter Ruling on behalf of xxxxxxxxxxxxxxxxxxxxxx. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of 86 Ill. Adm. Code Section 1200.1120 appears to be contained in your request. The Private Letter Ruling will bind the Department only with respect to xxxxxxxxxxxxxxxxxxxxxx for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither xxxxxxxxxxxxxx nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

The facts and analysis as you have presented them are as follows:

Our firm represents xxxxxxxxxxxxxxxxxxxxxx in the sale of the property at xxxxxxxxxxxxxx xxxxxx, xxxxxxxx, Illinois. I am writing to request a Private Letter Ruling on behalf of xxxxxxxxxxxxxxxxxxxxxx as taxpayer. The taxpayer's FEIN is xx-xxxxxxx. We are requesting a Private Letter Ruling to determine whether 35 ILCS 5/902(d) or 35 ILCS 120/5j applies to the sale of the real estate known as xxxxxxxxxxxxxxxxxxxxxx, xxxxxxxx, Illinois.

The facts are as follows: xxxxxxxxxxxxxxxxxxxxxx (hereinafter referred to as "Seller") is negotiating a Contract to sell the real estate known as xxxxxxxxxxxxxxxxxxxxxx, xxxxxxxx, Illinois to xxxxxxxxxxxxxx on the terms specified in the attached Contract of Sale.

The xxxxxxxxxxxxxx property had been leased to xxxxxxxxxxxxxx which operated a fast food restaurant on the premises until June, 2000. Seller purchased the property at xxxxxxxxxxxxxx, xxxxxxxx, Illinois and xxxxxxxxxxxxxx has moved their fast food business operation to the xxxxxxxxxxxxxx location in June, 2000. Since the time of that move, the property on xxxxxxxxxxxxxx has been vacant. The Seller listed the property for sale because it does not intend to lease the property to a new lessee.

The xxxxxxxxxxxxxxxxxxxxxx is an Illinois Limited Liability Company which is in the business of owning commercial real estate which is leased to fast food operator, xxxxxxxxxxxxxx. xxxxxxxxxxxxxx owns nine (9) commercial real estate locations which are each leased to xxxxxxxxxxxxxx and operated as a fast food restaurant. At no time has xxxxxxxxxxxxxx engaged in the selling of tangible personal property and is not subject to the Retailers Occupation Tax.

The nine (9) properties which the xxxxxxxxxxxxxxxxxxxxxx:

1. xxxxxxxxxxxxxxxxxxxxxx, Illinois;
2. xxxxxxxxxxxxxx, xxxxxxx, Illinois xxxxx;

3. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, Illinois xxxxx
4. xxxxxxxxxxxxxxxxxxxxxxxxxxxx, xxxxxxxxx, Illinois xxxxx
5. xxxxxxxxxxxxxxxxxxxxxxxxxxxx, xxxxxxxx, Illinois xxxxx (subject property);
6. xxxxxxxxxxxxxxxxxxxxxxxxxxxx, xxxxxxxxxxxxxxxxxxxxxxxx, Illinois;
7. xxxxxxxxxxxxxxxxxxxxxxxxxxxx, xxxxxxxxx, Illinois xxxxx;
8. xxxxxxxxxxxxxxxxxxxxxxxxxxxx, xxxxxxxxx, Illinois xxxxx; and
9. xxxxxxxxxxxxxxxxxxxx, xxxxxxxx, Illinois.

The sale of the xxxxxxx Avenue property is the sale of one of the nine properties owned by xxxxxxxxxxxxxxxxxxxxxxxx. The value of the xxxxxxx Avenue property is not significantly more than any of the other nine properties.

The taxpayer does not believe that 35 ILCS 5/902(d) applies to the transaction at hand because it is not a sale of a major part of the real property of any business. Further, this transaction does not include the stock of goods, fixtures, or furniture that are part of a business, machinery, or equipment that are a part of the business. This is a sale of one parcel of real property only.

The tax period for which the taxpayer requests the Private Letter Ruling is from 1998 to the present.

To the best of the knowledge of both the taxpayer and the taxpayer's representative, the Department of Revenue has not previously ruled on the same or similar issue for the taxpayer.

The taxpayer herein requests that the names of the taxpayer, taxpayer's lessee, seller, purchaser, and addresses of all locations be deleted from the publicly disseminated version of the Private Letter Ruling herein. A copy of the Power of Attorney will be forwarded to you as soon as it is executed.

Ruling

Section 902(d) of the Illinois Income Tax Act (35 ILCS 5/902) provides:

If any taxpayer, outside the usual course of his business, sells or transfers the major part of any one or more of (A) the stock of goods which he is engaged in the business of selling, or (B) the furniture or fixtures, or (C) the machinery and equipment, or (D) the real property, of any business that is subject to the provisions of this Act, the purchaser or transferee of such assets shall, no later than 10 days after the sale or transfer, file a notice of sale or transfer of business assets with the Chicago office of the Department.

Based on the representations in your request that the real property being sold is one of nine real properties owned by xxxxxxxxxxxxxxxxxxxxxxxx and that the value of the real property being sold is less than one-half of the value of all real property owned by xxxxxxxxxxxxxxxxxxxxxxxx, no notice is required under Section 902(d) because the sale does not involve "the major part" of the real property of the seller's business.

Section 5j of the Retailers' Occupation Tax Act (35 ILCS 120/5j) provides:

If any taxpayer, outside the usual course of his business, sells or transfers the major part of any one or more of (A) the stock of goods which he is engaged in the business of selling, or (B) the furniture or fixtures, (C) the machinery and equipment, or (D) the real property, of any business that is subject to the provisions of this Act, the purchaser or transferee of such asset shall, no later than 10 days after the sale or transfer, file a notice of sale or transfer of business assets with the Chicago office of the Department.

This provision applies only to persons subject to the Retailers' Occupation Tax. Based on your representation that xxxxxxxxxxxxxxxxxxxxxx is engaged only in the business of leasing real property, there would be no obligation to file a notice under Section 5j.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

Very truly yours,

Paul Caselton
Deputy General Counsel -- Income Tax